

Exhibit 16

ACTION NEA-00

INFO LOG-00 MFA-00 EEB-00 AGRE-00 AID-00 AMAD-00 ACQ-00
 CIAE-00 INL-00 DNI-00 DODE-00 DOTE-00 PERC-00 DS-00
 DHSE-00 EUR-00 E-00 FAAE-00 FBIE-00 VCI-00 H-00
 TEDE-00 INR-00 IO-00 LAB-01 L-00 CAC-00 MED-07
 MOFM-00 MOF-00 M-00 VCIE-00 NSAE-00 ISN-00 NSCE-00
 OIG-00 OMB-00 NIMA-00 CAEX-00 PA-00 PM-00 P-00
 SCT-00 ISNE-00 D-00 DOHS-00 FMPC-00 SP-00 IRM-00
 SSO-00 SS-00 NCTC-00 ASDS-00 CBP-00 R-00 SCRS-00
 PMB-00 DSCC-00 PRM-00 DRL-00 G-00 SAS-00 FA-00
 SWCI-00 /008W

-----D4A7DC 201750Z /38

P 201743Z JUN 07
 FM AMEMBASSY BAGHDAD
 TO SECSTATE WASHDC PRIORITY 1799
 INFO IRAQ COLLECTIVE

CONFIDENTIAL BAGHDAD 002040

RELEASE IN PART
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E.O. 12958: DECL: 06/12/2017

TAGS: PGOV, PINS, PINR, ASEC, KDEM, IZ
 SUBJECT: LEGAL AMBIGUITY IN BAGHDAD GOVERNANCE STRUCTURES
 AND POLITICAL VIOLENCE

Classified By: DEPUTY POLCOUNS ROBERT GILCHRIST FOR REASONS 1.4 (B) AND (D).

1. (E) SUMMARY: Baghdad is ruled by political elements seeking to maximize their influence in an environment of legal and institutional uncertainty. Provincial powers legislation that defines the authority of a provincial government, and legislation that specifically describes Baghdad's status as the Capital of Iraq according to Article 124 of the Constitution are needed to alleviate the environment of ambiguity that permits political forces connected to militia groups to openly vie for authority over national, provincial and local government institutions in Baghdad. Without a definitive legal framework, political entrepreneurs vested in various governmental institutions work to expand their authority and entrench their influence, beyond the scope of any traditional or recently defined jurisdictions. At the highest levels of government, this means political maneuvering and deal-brokering. In the streets of Baghdad, this can mean murder, extortion and intimidation in nearly every office of government service delivery. A conflicted and overlapping governance structure, partly based on traditional Iraqi institutions and partly involving innovations since 2003, exacerbates sectarian tension in the capital through the inefficient and unequal distribution of services and resources to Baghdad's residents.

2. (E) This is part of a series of cables from post and Baghdad PRT on the structure and challenges of Baghdad

REVIEW AUTHORITY: Sharon Ahmad, Senior
 Reviewer
 Declassified on 11-21-2018

governance. This is the second in a series of cables from Post and Baghdad PRT that examine how formal institutional arrangements are connected to the day-to-day violence on the streets of Baghdad. In this cable we talk about the major components of government in Baghdad, touching on national, provincial and local institutions. We then describe how an unclear legal framework sets the stage for extremists to pursue their criminal or sectarian agendas. END SUMMARY.

Starting with a simple question: What is Baghdad?

3. (C) Let's start with a fundamental question: Is Baghdad a city, a province or a capital? It is a city; home to nearly 6 million people. It is a province; the city and several outlying suburban areas were incorporated as a province under the former regime. And it is the historical capital of Iraq, home to the seat of a centralized national government. This question is not merely an academic one. In May of 2005, the City Council of Baghdad was forcibly removed from its offices in the Amanat (City Hall) by militia members tied to leaders of the Baghdad Provincial Council, which cited CPA Order 71 as their legal justification. In August of 2005, then-Mayor of Baghdad City al-Tamimi received a tip not to show up to work one day; he fled the country before he had a chance to be 'replaced' by the Provincial Council. In April of 2007, after nearly two years in office, current Mayor of Baghdad Saber al-Esawi was finally confirmed in his position by the Council of Ministers. He now holds the rank of Minister; this means he outranks the Governor of Baghdad Province (who only merits Deputy Minister status according to Iraqi law). If you ask some Baghdadis, they will say that the Governor has no authority within the city limits; however, if you ask the Governor himself, he'll beg to disagree. Historically, Baghdad was directly governed by officials of the national government; CPA Order 71, broadly defining the authorities of provincial government, gave power to several new institutions in Baghdad. Debates over drafts of the new provincial powers legislation (currently before the Council of Representatives) and arguments posed over Article 124 of the Constitution indicate that the question posed above is not a trivial one; many people's lives and livelihoods may depend upon the answer.

4. (C) In fact, this question may even be fundamental to the future of Iraq. A member of the disbanded Baghdad City Council told PRToff that the Badr militia members who threw him out of the Amanat were doing much more than serving their masters in the Provincial Council. The conflict between the City Council and the Provincial Council went far beyond differing interpretations of CPA Order 71, he said. By removing a key component of Baghdad's city government and launching the process of bringing the Amanat directly under provincial control, the parties dominating the Provincial Council achieved a step in a long term strategy to rob

Baghdad of its unique status as the capital of Iraq. According to this member, the real objective of these Shia parties and their supporters in Tehran is to forever change the capital of Iraq from Baghdad to the holy Shia city of Najaf. Supporting legislation that defines Baghdad's provincial government as identical to all other provinces is one way to make this process easier, he said. He claimed that fostering a climate of sectarian violence that makes

Baghdad unlivable, as Tehran seems to be doing, is also part of this strategy.

Baghdad's many government institutions vie for authority

5. (E) Baghdad's governance structure is a web of national, provincial and local institutions. Disputes over institutional authority plague nearly any government system; in Baghdad the problem happens to be particularly acute. The sectarian nature of Iraqi politics ensures that institutions tend to express the sectarian prejudices of those in charge; however, we see conflict arising in Baghdad for many other reasons. In an environment of legal ambiguity, and where the political will to enforce any existing legal framework is lacking, extremists are permitted to more easily use legitimate government institutions to pursue their sectarian and criminal agendas.

Conflicts in the wake of the 2005 elections

6. (E) Shortly after the party-list provincial elections in January 2005 (held in conjunction with the vote for the Transitional National Assembly), the new Provincial Council claimed that it was the only legitimate governing body in the province, based on being elected during an official, UN-sanctioned vote. The Provincial Council clashed with the Baghdad City Council, the Baghdad Regional Council and the local councils created under CPA rules. Citing the fact that neither the City Council nor the Regional Council were expressly written into Order 71, the partisan members of the Provincial Council expanded their authority at the expense of those bodies, including seizing the salaries for the members of those councils. When City Council members questioned the actions of the Provincial Council, citing the historical separation between what was the 'city' of Baghdad and what was the 'province' of Baghdad, the PC voted to dissolve the City Council. Refusing to obey this directive, the City Council soon found itself forcibly removed from the Amanat by armed militia members.

7. (E) The City Council brought suit against the Provincial Council in the Iraqi Administrative Court, and won their

case. CPA Order 71 says that the PC has the authority to create councils, but does not expressly state that it may dissolve a council. This was the key issue the case rested on. Despite this victory, the City Council has never returned to power in the Amanat. The PC appealed the decision to the Federal Court; the Court claimed it was a political issue and should be decided by the Council of Representatives (CoR). The CoR refused to weigh in on the issue and sent it back to the Court. The national government seems to lack the political will to enforce CPA law in this case, instead waiting for future legislation to sweep this problem under the rug.

National leaders unable or unwilling to settle disputes

8. ~~(C)~~ After dissolving the City Council, the Provincial Council turned on Mayor Tamimi. Again citing Order 71, the PC declared their authority over the position and fired Tamimi. He refused to leave, claiming that the city's special status as the capital made him impervious to their demands. Political reality tempered his position. Reportedly responding to a tip-off from a PC member, Tamimi fled the country while the Governor of Baghdad Hussein al-Tahan (Badr) took office as the acting Mayor of Baghdad, accompanied by his Badr associates. The PC appointed one of their members, Saber al-Esawi, to take office as the new Mayor, and asked then-Prime Minister Ja'afari to bless this decision. The PC waited nearly three months for Ja'afari to even acknowledge their actions; in the meantime Tahan continued serving as both Governor and Mayor of Baghdad. While acting according to CPA law, the PC still needed to respect previous Iraqi law that said that the Council of Ministers must approve all appointments to the position of Mayor of Baghdad. In October, the Council of Ministers approved the 'temporary' appointment of Mayor Saber al-Esawi; he has waited until April of 2007 to receive official confirmation (and the lifetime pension that comes with being a minister).

Streamlining bureaucracy, or pursuing a sectarian agenda?

9. ~~(C)~~ The PC also recently subsumed the City Council's suburban equivalent, the Regional Council. By majority vote of the Shia-dominated Provincial Council, the largely Sunni

Regional Council was incorporated into the committee structure of the PC. This power struggle may have been less dramatic than the fight over the Amanat, but leaders of the Regional Council suffered similar intimidation as the PC expanded its authority over their activities. According to their original charter of 2004, the Regional Council had the

authority to deal directly with the MMPW to fix service issues for the outlying communities. ISCI and Sadrists-affiliated leaders of the PC, again citing Order 71 (and backing this claim up with militia intimidation), assumed this authority for themselves. Members of the Regional Council were previously paid their salaries directly from the MMPW, now the PC receives and distributes those funds. The Sunni members of the Regional Council claim sectarian prejudice when they are not paid on time; Shia PC members claim that bureaucratic inefficiency is to blame.

10. (C) Members of the PC tell PRToff that they recognize that their actions in absorbing the Regional Council may appear sectarian, but they are struggling to bring some efficiency to local government. They note that the new committee chairman who is responsible for working with the councils of the outlying suburbs is a Sunni. In fact, Subhy al-Meshadani is the only Sunni Arab on the Baghdad Provincial Council; elected in 2005 to represent the Communist Party.

Shia control raises questions about inequality

11. (C) In April 2007, the Amanat added a new service district to Baghdad, dividing the majority Shia district of 9 Nissan (also known as 'New Baghdad') into two districts, each served by a separate municipality office. This follows the addition of a number of other service districts since 2003. The Amanat creates new districts in order to improve service provision to areas experiencing population growth. It just so happens that every new service district proposed by the Shia-dominated Provincial Council and approved by the Shia-dominated Amanat serves a Shia-majority section of the city.

12. (C) The Shia population of Baghdad is growing, so there is some merit to these additions as legitimate urban development. Shia leaders also claim that these new changes merely reflect the Amanat finally rectifying the injustice of poor services that the Shia received under Saddam.

13. (C) Some local Sunni leaders say that the Shia-dominated government is completely sectarian and offer evidence to back their claims. A Sunni member of the Adhamiya District Council saw the Amanat split his service district into two; he claims that when the Director General (DG) of the new district opened his office in the Shia-majority neighborhood of Shaab, he took Adhamiya's trucks and equipment with him. The DG of the old Sunni-majority section of Adhamiya finds it increasingly difficult to get the support he needs from the Amanat.

Extremists seize control through legal and illegal methods

14. -(C) Many residents and local leaders say the Office of the Martyr Sadr (OMS) and Jaysh al-Mahdi (JAM) have seized control of nearly every office of government service delivery in Baghdad through intimidation, extortion and assassination. They also use elections, appointments, hirings and firings. Using both legal and illegal methods, Sadrists have expanded their influence throughout Baghdad's local, provincial and national government institutions.

15. -(C) After dissolving the City Council and asserting their authority over the Amanat, the Provincial Council placed several of their own members into leadership positions at the Amanat, replacing key technocrats with partisan politicians. PC member Saber al-Esawi (ISCI) became Mayor of Baghdad. Naeem Aboub al-Kaby (Sadr) became Deputy Mayor for Municipalities, the second-highest position in the Amanat. Another PC member, Atiyah al-Ugaily (ISCI) took the Deputy Mayor for Administration position. These appointments represent the political power-sharing arrangement between ISCI and the Sadrists, the two most potent forces in Baghdad -- each a political party with a militia wing.

16. -(C) This power-sharing arrangement is not static. Nearly everyone in Baghdad admits that Sadrists are achieving the upper-hand in their rivalry with ISCI and their Badr militia compatriots. ISCI leaders at the PC state their concern that Sadrists will beat them at the polls during the next election. [redacted] told PRToff that the Sadrists are expanding their influence over politics in Baghdad. Many provincial leaders tell PRToff that Deputy Mayor Naeem al-Kaby (the Sadr) is the one actually running Baghdad, not Mayor Saber al-Esawi (the ISCI member).

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Sadrists within the system use it to their advantage

17. -(C) Deputy Mayor al-Kaby rose rapidly from a minor municipal employee in Sadr City to one of the most influential positions in the entire government of Iraq. He also personifies one of the fundamental dilemmas facing USG efforts. As Deputy Mayor, he is extremely influential in making sure projects are approved and services provided; he has been cooperative with PRT, USAID and MNF reconstruction and development efforts. As a high-ranking Sadr with connections to OMS and JAM, it is believed by many that he uses his position to advance a sectarian agenda and enrich himself.

18. -(C) Local council members in Adhamiya (Sunni district), Kadhamiya (Shia district) and Karkh (mixed district) told PRToff on separate occasions that al-Kaby ensures that every contract tendered by the Amanat is reviewed by OMS, allowing

the Sadrists to take a cut. Al-Kaby is responsible for the hiring and firing of DGs across the city; an incredibly powerful way to express favoritism and patronage to his Sadrists colleagues, or to remove political opponents.

According to the reports [redacted]

[redacted] numerous members of the Provincial Council, many local council members, and a number of local national contacts, it is widely asserted that al-Kaby is responsible for entrenching Sadrists domination at the Amanat; through that domination Sadrists wield immense control over the provision, or denial, of essential services to every resident in Baghdad.

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Control of services means opportunity for criminality

19. -(C) Sadr City council members told PRToff that JAM seized control of local fuel distribution offices in their district through intimidation and extortion; the profits from the sale of fuel at black market prices are incredibly lucrative for the Sadrists. Gaining a foothold in the Social Affairs Ministry allows JAM to generate revenue through fraudulent claims. Ministry of Health (MoH) offices provide an opportunity for JAM to channel medicine onto the black market. Current MoH DGs in Baghdad are appointees of the former minister, a Sadrists.

20. -(C) JAM charges fees to market vendors, and collects money from shoppers who park in the lots near those markets. According to many sources, JAM demands 'protection money' from business owners in many neighborhoods. The licensing of vendors and the conduct of markets in the city of Baghdad has traditionally fallen under the authority of the Amanat. With a Sadrists able to wield 'official' power at that institution, it is not surprising that 'unofficial' colleagues are permitted to work around the fringes of that institution's jurisdiction with impunity.

21. -(C) In each of these instances, Sadrists either gained access to these government offices through legitimate methods like an appointment or an election, or they seized control through skullduggery. Sometimes a combination is used. Members of the Sadr City district council told PRToff that at a recent meeting to select a new chairman, JAM militants were present to ensure that everyone voted to keep the current chairman, Abd al-Hassan al-Jibara in office. After JAM militants took over the fuel distribution office of the district -- by physically threatening some of the workers, and by paying others to stay at home -- Chairman al-Kaby provided District Council badges to these thugs, making them official 'employees' of the DAC.

Crossing a boundary into militia territory

22.-(C) Local officials working in an uncertain legal and political environment often run into obstacles when performing their duties. Karadah district council member Nashat al-Husseini was murdered for doing his. Al-Husseini (Shia) was a long-time member of the Karadah council and chairman of its Security Committee. With a vague mandate, he sought to improve coordination between his council and the local units of the Iraqi Police and look into cases of corruption. He ran afoul of JAM elements within those units, according to several other council members, and was targeted for assassination. This was not a sectarian killing; he was killed merely because he was trying to exert the institutional authority of his council.

Comment: Preventing violence by laying down the law

23.-(C) COMMENT: Unresolved legal issues produce institutional conflict; in the absence of a clear, enforceable governing framework the political elements that dominate governing institutions turn to extra-legal methods to acquire resources, provide services to favored constituents, and expand their influence over weaker institutions. The draft Provincial Powers Law now being considered by the Parliament may address some of these structural issues. However, committed political leaders will also have to be willing to stand up against the entrenched extremists who benefit the current ambiguity.

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